

LAW AND THE ART WORLD

Art: At the bottom line, it's still a business

By Bill Frazier ©2013

Business and law go hand in hand and these concepts apply to the creation and sale of artwork just as to any other items. For the most part, the law and business practices treat art just as any other consumer product. Artists, galleries and auctions have responsibilities to their customers (collectors) just as the purveyors of any other product in our day-to-day lives. Those of us who are attracted to the fine arts like to think of them in more esoteric terms, but at the bottom line, it is still a business of producing and selling artwork.

Business and legal concepts apply, such as contract law, warranty, consignment (called bailment in some states), copyright and trademark, among others. Many artists work with galleries and shows in different states and it is always important to remember that many applicable laws vary from state to state.

I would encourage artists to look up art issues in their state codes, often found on Google, and compare them with what they think they know about the law. Urban myth notwithstanding, there are many laws specifically designed to benefit artists, arts organizations and artistic endeavors.

All copyright law is federal as is most trademark law. However, most states also allow limited trademark protection along with protection for assumed business names and logos. In virtually all cases, these federal intellectual property laws take precedence over the state regulations.

Many states offer property-tax exemptions for nonprofit organizations that operate art galleries. This can save the typical nonprofit organization thousands of dollars each year in what would otherwise be property-tax payments.

Those of you involved with such organizations should check your state laws on this exemption because even many tax assessors and county treasurers are not aware of this benefit. This is in addition to the exemption for federal income taxes for many such organizations.

Pricing art in the "new economy"

Another important business concern for artists is pricing and this is always a problem. Pricing is an ego and philosophical issue for many artists. These next comments are not designed to insult anyone or their artwork.

In this economy, prices of most things are not what they were several years ago. Most businesses have had to make pricing adjustments to what things will sell for, everything from real estate to cars to livestock.

Economic analysts have been saying for several years that we are living in, and must get used to, the "new economy." This analysis applies to the arts just as with everything else. All businesses must be flexible and this applies to art pricing, too.

This is difficult for artists to accept. The quality of the work is the same, the value is the same, but the work just will not sell for the same prices. Artists and galleries all over the United States are grappling with this pricing problem.

Buyers are not willing to pay the prices for work, for the most part, that they were paying several years ago. This is because most potential buyers do not have the money that they had several years ago and must cut back on spending. For a lot of people supportive of the arts, finances are coming down to gas, groceries or art. Where do you cut? Priorities and perceptions are driving the market.

I started saving and buying art when I was in college when I could not afford it at all. I still do, but for many with the economy in reset mode, priorities change. So, what does this mean for artists?

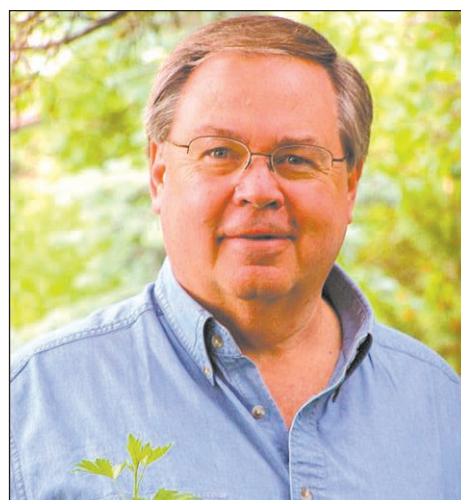
It means the same thing for artists as for any other business people: Be flexible, adjust pricing and sell what you must to make a living. Is it not better to sell a painting for \$500 than not sell it for \$600?

Sell your work and do not leave it stacked in a closet in your studio. Prices will re-adjust themselves later, but in the meantime, you are generating cash flow and paying your expenses. You cannot wait forever for prices to go back up. Consider how long it took the stock market to recover.

In the meantime, continue to produce artwork and price it so that it will sell. Collectors who buy your work now in a depressed market will continue to buy your work and be supportive when the market improves.

The same considerations apply to galleries. Work must sell for galleries to remain open. I continue to argue that it does not matter what prices were six years ago. Things are different now.

Artists, please do not be misled by some



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extravagant auction sales. These are not everyday sales and often are the result of several rich buyers competing with each other. These sales and prices are not representative of the broader market.

Artists and galleries: Keep in touch

As I have suggested in other articles, artists and galleries should maintain close contact regarding inventory and sales. The more time goes by after a sale before an artist is paid, the greater the likelihood that he will never get paid.

Sales proceeds do not belong to the gallery, only the commission. Consigned artwork is held and sold in trust for the artist and the gallery must pay the artist before its commission is earned. Artists' proceeds may not be used for other expenses.

I continue to be surprised by artists who do not remember where they have placed their work and by galleries trying to find these artists to pay sales proceeds. This situation is especially problematic where an artist changes address without informing the gallery or providing forwarding information.

The flip side is the situation where a gallery is planning to close or its owner is retiring and the artwork must be returned to the artists. Keep yourselves informed.

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Find "Law and the Art World" online

Bill Frazier's "Law and the Art World" series is also available online.

Now there is a quick and easy way to search within "Law and the Art World" for Frazier's legal perspective on specific topics. His articles have been regrouped into 11 categories under the title "Artists' Legal Advice." In these, Frazier discusses contracts, auctions, taxes, copyright issues and other subjects of recurring interest to artists.

Please bear in mind Frazier's important advice when using the resource:

"... Don't forget that the law is a dynamic and ever-changing thing."

To reach the collection of articles, go to the arts council website at www.art.mt.gov and select the *State of the Arts* link on the right side of the home page. That takes you to the *State of the Arts* page and a drop-down box under the "View articles for specific section"; then choose "Law and the Art World" from the drop-down menu.

Tech Talk: How to sell "branded" products

By Mark Ratledge

Over the last four issues, I covered the steps of working with a Content Management System called WordPress in order to start a free – or inexpensive – website for yourself or your arts organization. And I outlined how to get started with e-commerce with that site to sell your artwork for yourself or your organization.

There is another aspect to selling artwork on the web that could be a personal sales or organizational fundraiser angle for you: What about selling artwork "branded" products to benefit yourself or your organization through your website?

A "branded" product is a t-shirt, a mug or a shopping bag with art of your own or art that represents your organization. If you take a look around your home or office, chances are you will see lots in your kitchen or closet and on your walls.

There are many businesses on the web that produce "on demand" products, pairing your artwork and their items. On demand means that those companies don't produce anything ahead of time; they wait for an order for your t-shirts or cards to come in,

and produce it right then and ship it for you.

CafePress is one of the most popular

businesses on the web that does this, while Zazzle is also a popular company with thousands of products. Check each of those websites for the range of products you can have printed with your artwork, your logo, or any combination to give away or sell to promote yourself. Or Google "branded products" to see what else is out there.

You'll need to open an account with each business, choose items, upload artwork and set up your store. And it's a good idea to order one of each product yourself to check quality and colors before going public, be it coffee mugs, t-shirts or cards.

And because both Zazzle and CafePress can supported by WordPress "plugins" – free add-ons to WordPress – you can embed a Zazzle or CafePress store right in your WordPress site. That means people can shop right

from your website and not leave it, even when they check out.



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CafePress and Zazzle work well, but be sure and look locally before you go with either. Check for t-shirt and printing shops in your town; they can do the work for you and you won't pay a commission to CafePress or Zazzle. And by shipping yourself, you will be able to include brochures and other personal touches in the package and keep an eye on product quality, too. Or, you could do a combination of both: CafePress and Zazzle will

have some products not available locally.

And remember: If you use someone else's artwork on products, be sure to get a MOU or contract with the artist (not my area of expertise) for the use of the art. You may need to pay for the use of the art. And include the copyright symbol, too, on products, and warning text, if appropriate.